IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.312 OF 2006
WITH
CIVIL APPLICATION NO.399 OF 2006

Mr.Mukund Menon & Ors. ..Appellants.

V/s.

Mr.Ishwar Khushaldar Punjabi. ..Respondent.

Mr.Y.S.Jahagirdar for appellants.

Mr.R.G.Ketkar for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 21, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant documents on record.

2. I see no reason to interfere with the order which is impugned in this appeal from order, passed by the 4th Joint Civil Judge, Sr.Division, Pune, dated 3rd March, 2006, below exh. 5 in R.C.Suit No.140 of 2006. The learned counsel for the appellant submits that in a suit for recovery of money it was not open to the court to grant injunction in relation to the immovable property held and possessed by the appellant. The argument is attractive but it is devoid of substance in the fact

situation of the present case. This argument clearly overlooks that the respondent/plaintiff had filed composite application before the trial court. The relief as prayed in prayer clause (a) of the application is referable to the order to be passed in terms of Order 38 Rule 5 of the C.P.Code, whereas the relief in terms of prayer clause (b) is referable to order to be passed in terms of order 39 Rule 1 clause(b) of C.P.Code. The relevant fact for passing such order has been noted in the application as filed. The court below has accepted the apprehension of the respondent/plaintiff, which apprehension was founded on the circumstance that public notice for sale of the property was issued by the appellant/defendant in local newspaper. The court below in paragraph-16 of the impugned Judgement has accepted this case of the respondent/plaintiff and then proceeded to pass order of the injunction which is obviously in terms of power under Order 39(1)(b) of the C.P.Code. On this finding, grievance of the appellant that the order which is passed is in excess of jurisdiction, as it does not comply with the requirement of calling upon the appellant to furnish security in terms of Order 38 Rule 5(1) r/w subrule 4 of Rule 5, does not commend to me. Accordingly, this appeal fails.

3. It will however, be open to the appellant to furnish appropriate security before the trial court whereupon the trial court may consider request for lifting the order of injunction. This observation in my opinion, will serve the ends of justice.

4. Appeal as well civil application disposed of on the above terms.